

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION**

|                                  |   |                         |
|----------------------------------|---|-------------------------|
| <b>MARIAN SNOW,</b>              | ) |                         |
|                                  | ) |                         |
|                                  | ) |                         |
| <b>Plaintiff,</b>                | ) | Case No. 5:18-CV-511-FL |
|                                  | ) |                         |
| <b>v.</b>                        | ) |                         |
|                                  | ) |                         |
| <b>GENERAL ELECTRIC COMPANY,</b> | ) |                         |
| <b>DELL TECHNOLOGIES, DELL,</b>  | ) |                         |
| <b>INC., and DELL EMC,</b>       | ) |                         |
|                                  | ) |                         |
| <b>Defendants.</b>               | ) |                         |

**DEFENDANTS DELL TECHNOLOGIES, DELL INC., AND  
DELL EMC’S AMENDED MOTION TO DISMISS THE FIRST AMENDED  
COMPLAINT**

Defendants Dell Technologies, Dell Inc., and Dell EMC (collectively, the “Dell Defendants”) hereby move the Court to dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. As grounds for its Motion, the Dell Defendants state that Plaintiff’s claim for violation of the Telephone Consumer Protection Act (“TCPA”) fails because she has not alleged any facts connecting the text messages to the Dell Defendants, or to allege that the Dell Defendants were the maker of the text messages. Plaintiff’s TCPA claim also fails to allege that the text messages at issue were sent using an Automatic Telephone Dialing System (“ATDS”), which is a required element of a TCPA claim.

In addition, Plaintiff’s conversion claim fails because Plaintiff has not alleged that the Dell Defendants wrongfully took possession of any tangible property. Plaintiff’s complaint is not about the theft of her phone, and so, her claim for conversion is inappropriate and should be dismissed.

In further support of this Motion, the Dell Defendants adopt and expressly incorporate herein its Memorandum of Law in Support of its Motion to Dismiss, which is being filed contemporaneously with this motion.

WHEREFORE, the Dell Defendants respectfully request that this Court enter an Order dismissing Plaintiff's First Amended Complaint with prejudice.

Dated: December 10, 2018

Respectfully submitted,

/s/ Derin Dickerson

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2018, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of the filing to all counsel of record and the Plaintiff.

/s/ Cassandra K. Johnson

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